timely present their claims in state court ''affords the state courts the opportunity to resolve the issue shortly after trial, while evidence is still available both to assess the defendant's claim and to retry the defendant effectively if he prevails in his appeal.'' Murray v. Carrier, 477 U.S. 478 (1986). But when a federal habeas court orders a sentencing retrial on the basis of a claim that was never presented to the state courts, it often will have been many years since the original trial and the crime occurred. (In the Wrede case, the Ninth Circuit's reversal of the killer's sentence came 17 years after the crime had been committed.) During this time, witnesses often will die or disappear or their memories will fade and other evidence will become unavailable. If defaulted claims were exempted from my amendment, not only would habeas petitioners presenting such claims have better access to the federal courts than would those who followed state rules; the relief that the defaulting petitioner obtains would be more likely to mean not just a second chance to try the sentencing case, but rather would amount to a permanent bar on the state's imposition of a capital or other sentence.

Finally, I would like to respond briefly to those critics who argue that any tailoring or limits on federal habeas-corpus review constitute an unconstitutional ''suspension'' of the Great Writ. I would note that federal courts rejected this argument when it was made by critics of the 1996 reforms. The courts noted that Congress has the power both to expand and to retract the scope of federal collateral review of state criminal convictions. In Felker v. Turpin, 518 U.S. 651 (1996), the U.S. Supreme Court highlighted the utter lack of basis for the view that Congress is required to grant lower federal courts unrestricted power over state criminal convictions:

''The first Congress made the writ of habeas corpus available only to prisoners confined under the authority of the United States, not under state authority. It was not until 1867 that Congress made the writ generally available in 'all cases where any person may be restrained of his or her liberty in violation of [federal law].' And it was not until well into this century that this Court interpreted that provision to allow a final judgment of conviction to be collaterally attacked on habeas.''

The Supreme Court concluded: ''We have long recognized that the power to award the writ by any of the courts of the United States, must be given by written law, and we have likewise recognized that judgments about the proper scope of the writ are normally for Congress to make.''

The U.S. Court of Appeals for the Seventh Circuit elaborated on this point in Lindh v. Murphy, 96 F.3d 856 (rev'd on other grounds, 521 U.S. 320), and explained the nature of the constitutional habeas right:

''The writ known in 1789 was the pre-trial contest to the executive's power to hold a person captive, the device that prevents arbitrary detention without trial. The power thus enshrined did not include the ability to reexamine judgments rendered by courts possessing jurisdiction. Under the original practice, ''a judgment of conviction rendered by a court of general criminal jurisdiction was conclusive proof that confinement was legal * * * [and] prevented issuance of a writ.'' The founding-era historical evidence suggests a prevailing view that state courts were adequate fora for protecting federal rights. Based on this assumption, there was (and is) no constitutionally enshrined right to mount a collateral attack on a state court's judgment in the inferior Article III courts and, a fortiori, no mandate that state court judgments embracing questionable (or even erroneous) interpretations of the federal Constitution be reviewed by the inferior Article III courts.''

The Seventh Circuit concluded: ''Any suggestion that the [Constitution] forbids every contraction of the [federal habeas] power bestowed by Congress in 1885, and expanded by the 1948 and 1966 amendments, is untenable.''

My amendment is a necessary and appropriate adjustment to the federal jurisdiction over state criminal convictions. I am pleased to see that it is part of the Children's Safety and Violent Crime Reduction Act.

EXPRESSING SUPPORT OF CONGRESS REGARDING ACCESS OF MILITARY RECRUITERS TO INSTITUTIONS OF HIGHER EDUCATION

SPEECH OF

HON. JAMES R. LANGEVIN

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 14, 2006

Mr. LANGEVIN. Mr. Speaker, today the House will be voting on legislation to affirm the ability of military recruiters to access college campuses. As a member of the House Armed Services Committee, I support our military's efforts to recruit some of our most promising young men and women and believe that service in our nation's armed forces is an honorable career choice. However, I question why we are considering this measure, especially as the Supreme Court unanimously upheld Congress's position a short while ago. If Congress's authority has not been challenged, why are we reiterating it?

As we have heard, a lawsuit arose when a group of colleges challenged the Congressional requirement that military recruiters be granted access to schools that receive federal funding. The schools argued that the U.S. military's policy of excluding gays and lesbians from serving openly violated their non-discrimination requirement for prospective employers on campus, and that the recruiters' presence would be interpreted as the schools' official endorsement of the military's position. The Supreme Court rejected this argument, noting that colleges and universities still maintained their right to express their opposition to the military's policies as they saw fit. The resolution of today reaffirms the very Congressional power that the Court just upheld.

Unfortunately, Congress is debating the wrong issue. Instead of celebrating a minor legal victory, we should be discussing how to end the discriminatory ''Don't Ask/Don't Tell'' policy that inspired the opposition from the colleges and which threatens our military readiness to this day. Since the policy's enactment in 1993, Don't Ask/Don't Tell has resulted in the discharge of nearly 10,000 service members, many of whom had language proficiency or other skills essential to the Global War on Terror. Over the past ten years, Don't Ask/Don't Tell has cost the U.S. military hundreds of millions of dollars—funds that could have gone toward obtaining additional armored vehicles and investing in other vital force protection initiatives.

Don't Ask/Don't Tell, originally conceived as a compromise, has outlived its utility and now actually harms our military readiness and its ability to perform certain essential functions. Qualified and dedicated servicemembers should not be discharged based on their sexual orientation, especially at a time when our National Guard and Reserves are serving repeated deployments. For these reasons, I am an original cosponsor of H.R. 1059, the Military Readiness Enhancement Act, which would replace Don't Ask/Don't Tell with a policy that would not allow discrimination or discharges based on sexual orientation.

Those who oppose repeal of Don't Ask/Don't Tell conveniently ignore that gay men and women already serve in the military—many with great distinction—despite the fact that they must hide their identities from those whose lives they have sworn to defend. They also ignore the fact that some of our closest allies in the Global War on Terrorism permit open service by gay men and women, and our forces regularly serve alongside theirs without incident. They also ignore numerous polls indicating that a strong majority of Americans support repeal. Our military's purpose is to protect the United States, and it must recruit the most qualified people in order to succeed. Repeal of Don't Ask/Don't Tell is consistent with that goal.

I will support H. Con. Res. 354 today because I believe we should be encouraging our nation's finest young men and women—no matter who they are or where they go to school—to join the strongest, smartest and most capable military in the world. However, such an effort is incomplete without also repealing Don't Ask/Don't Tell. I encourage all of my colleagues to cosponsor H.R. 1059 to ensure that all who are willing and able to serve may do so.

IN HONOR OF THE PREMIERE OF ''WALKOUT''

HON. XAVIER BECERRA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 15, 2006

Mr. BECERRA. Mr. Speaker, facing unfortunate injustices, relegated to second class citizenship, and anxious to see change come to their classrooms, a group of students banded together in 1968 to protest the conditions of their high schools in East Los Angeles. The civil and non-violent protest took the form of a staged and systematic ''walkout,'' which was not only the single largest protest by high school students ever in the history of the United States, but is also recognized as the event that gave birth to the Chicano civil rights movement.

Today, I rise and pay tribute to the efforts of these students who embody change and whose memory reminds us all that peaceful, intelligent activism can right egregious wrongs. That reminder is now ever more visible as this seminal moment in civil rights history has been put to film, premiering tonight here in Washington, D.C., and on Saturday, March 18, on HBO.

Called ''Walkout,'' the film provides a sincere and candid look at these student protests